

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Breese et al.	§	Group Art Unit: 2145
	§	
Serial No. 10/062,369	§	Examiner: Pollack, Melvin H.
	§	
Filed: January 31, 2002	§	Customer No. 50170
	§	
For: Method and System for	§	
Performance Reporting in a Network	§	
Environment		

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

ATTENTION: Board of Patent Appeals and Interferences

APPELLANTS' REPLY BRIEF (37 C.F.R. 41.41)

This reply brief is in response to the Examiner's Answer mailed January 11, 2007.

The fees required under § 1.17(c), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF REPLY BRIEF.

I. Response to Examiner's Remarks Regarding Rejections Under 35 U.S.C. 103(a)

The arguments presented with regard to the various combinations of the references Hershey, Chandra, Schwaller and Wlaschin, set forth in Appellants' Appeal Brief, are believed to still be applicable to the present rejections in view of the Examiner's Remarks in the Examiner's Answer. The following remarks are provided to address certain points raised by the Examiner in the Examiner's Answer.

In section 10, page 8 of the Examiner's Answer, the Examiner alleges (1) that the art of record uses the term "transaction" to refer to any part of a transaction hierarchy; (2) that the definition of "transaction" as the term is used by Appellants cannot be "forced upon" the prior art; (3) Chandra's definition of a transaction does not match the Appellant's definition of a transaction; (4) Chandra allegedly teaches multiple testing protocols, each of which comprises multiple testing scripts, each of which comprises multiple steps (column 7, lines 15-50); (5) the most common step is the connection which consists of multiple transactions; (6) the connection process comprises a subdivision of steps and the separation by connection allegedly fulfills separating protocols into scripts into steps into transactions; (7) measuring the performance of a connection as a whole allegedly fulfills the limitation of measuring steps of a script; (8) Chandra teaches a variety of reports including a connection analysis (by request) and a periodic report (by various connections, script, and transaction count) which comprise connections and sub-steps of connections which is allegedly the same as a report having entries for each of the individual transactional steps of a transaction; and (9) the mere arrangement or compilation of facts and data without any functional relationship is not patentable. Each of these allegations will now be addressed.

Allegations (1)-(3) are related and thus, will be addressed in combination. The Examiner admits that Chandra does not teach a "transaction" as the term is used and defined by the present application when the Examiner states that "Chandra's definition of transaction does not match the application's definition of transaction..." on page 9 of the Examiner's Answer. The Examiner alleges that the definition of the term "transaction" as it is used in the present application cannot be forced upon the prior art. However, this allegation is simply incorrect. It is well established that the specification serves as a definition for the terms in the claims and that the terms of the claims must be interpreted in light of the specification. Thus, when examining

the claims, the Examiner must view the teachings of the references in view of the way that the terms in the claims are defined by the specification to determine if the references actually do or do not teach or suggest the features of the claims. The fact that Chandra allegedly does not define transactions in the same manner as the present application, as admitted by the Examiner, would be further evidence that Chandra does not teach or suggest the features of the claimed invention.

The Examiner alleges that Chandra uses the term “transaction” to refer to any portion of a hierarchy, but fails to provide any evidence to that effect. There is no statement anywhere in Chandra that a transaction is any portion of a hierarchy of transactional steps. To the contrary, the Examiner goes through some elaborate and strained analysis, which is addressed hereafter, in an attempt to make the Chandra reference appear to teach the transactions recited in the claimed subject matter when it simply does not. As discussed at length in Appellants’ brief, Chandra is only concerned with the performance of connections as a whole, not individual transactional steps of a script. As specifically defined in the present claims, a script performs a transaction between a client computing device and a server computing device, the script comprises a plurality of transaction steps for performing the transaction. Thus, a transaction is comprised of a plurality of transactional steps, and the script is used to perform these transactional steps to thereby perform the transaction.

With regard to (4) above, the Examiner alleges that Chandra teaches multiple testing protocols, each of which comprises multiple testing scripts, each of which comprises multiple steps at column 7, lines 15-50 of Chandra. Chandra does teach that a test protocol may comprise a plurality of test scripts. Although not explicitly stated in Chandra, it is probable that a test script will have a plurality of commands or steps. The deficiency of Chandra is not that it does not teach scripts having multiple commands or steps. The deficiency is that Chandra does not monitor the performance of the individual steps of a script and thus, cannot possibly teach the monitoring of the performance of individual transaction steps in a script used to perform a transaction, as recited in the present independent claims. To the contrary, Chandra is only concerned with connection performance as a whole and is not concerned with monitoring the individual performance of transaction steps, let alone providing a report having entries for reporting the performance of each of these individual transaction steps.

With regard to (5)-(7) above, the Examiner alleges that because establishing a connection may comprise a plurality of steps, and Chandra teaches that there may be multiple connections, that somehow separating out information based on the connection is equivalent to monitoring the performance of individual transaction steps of a transaction performed by a script. Thus, the Examiner concludes that measuring the performance of a connection as a whole somehow fulfills the limitation of measuring steps of a script. It seems that the Examiner is making a large number of logical leaps in an attempt to make Chandra appear to teach the monitoring of performance of individual transaction steps of a transaction performed by a script when it actually does not. Simply because there may be multiple connections and there may be multiple steps in establishing a connection does not render the specific features of the independent claims obvious. The fact is, Chandra uses test protocols and test scripts to perform tests of connections to thereby gather performance information for the connection as a whole. Chandra does not monitor the individual steps of the scripts. To the contrary, Chandra is only concerned with the performance of the connection as a whole and thus, cannot and does not suggest obtaining performance data for individual transaction steps. In fact, the performance measures that Chandra specifically teaches are the throughput, transaction rate, and response time, which are all performance measures at a connection level, not an individual transactional step level.

Even if Chandra were considered to monitor individual transaction steps, which it does not, nowhere in Chandra is there any teaching or suggestion to provide a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script, having associated performance data collected from one or more of at least one local probe or at least one remote probe. The Examiner alleges that Chandra teaches this feature simply because Chandra allegedly teaches a variety of reports including a connection analysis (by request) and a periodic report (by various connections, script, and transaction count) which comprise connections and sub-steps of connections. The Examiner points to Tables 1-4 of Chandra as allegedly providing evidence that Chandra teaches this feature of the independent claims. These tables are explicit evidence that Chandra does not teach a report such as that recited in the independent claims.

The tables of Chandra are representations of data that may be stored in an object database as results of testing connections. Chandra specifically states that “performance results using the present invention may generally be grouped and reported as performance and/or connection analysis” (column 15, lines 43-45), and pointing out the fact that Chandra is only concerned with

the connection level performance, not individual transaction steps in a transaction performed by a script. Table 1 is described as an exemplary format for results storage in an object database for a performance analysis of a network (column 15, lines 45-47). It should be noted that nowhere in Table 1 is there any entry for each transaction step of a transaction performed by a script. To the contrary, the information in Table 1 comprises failure information for a test, number of transactions as part of the test, total number of bytes that were sent/received, total amount of time used to run the test, if the run was above a threshold, and the date and time of the test. There is no teaching of individual transaction steps of a transaction of a script in Table 1.

Table 2 is threshold crossing data that is kept in the object database for each threshold crossing, i.e. a measurement of a test failing a specified criteria or returning to a normal condition (column 15, lines 64-66). Again, it is important to note that none of the information in Table 2 is directed to individual transaction steps of a transaction, let alone providing individual entries for each transaction step of a transaction of a script along with the transaction step's performance data. The data in Table 2 is associated with critical threshold crossings, not individual transaction steps of a transaction performed by a script.

Table 3 depicts connection analysis results data. This data includes information about a connection of a request, a request ID, a request data/time, a connection identifier, a connection type, an endpoint name, and endpoint address, an application script name, a schedule name, a comment, etc. Conspicuously, yet again, there is nothing in this table that teaches or suggests individual entries for each transaction step of a transaction performed by a script. Similarly, Table 4 depicts a periodic report table that again includes information about connections, e.g., connection table information, connection identifier, connection type, endpoint names and addresses, script names, script identifiers, schedule names, comments, etc. Once again, there is a lack of any teaching or suggestion regarding individual entries for individual transaction steps of a transaction performed by a script.

Thus, while Chandra may teach a variety of reports, none of the reports have the features of the report recited in the independent claims. Simply teaching a variety of reports does not render obvious the specific reporting recited in the independent claims. Moreover, as discussed at length in Appellants' brief and above, Chandra does not provide an ability to monitor individual transaction steps and, as a result, is incapable of reporting performance data in the manner set forth in the present independent claims.

Regarding (9) above, while reciting a particular arrangement of data in itself may not be patentable, when that arrangement of data is otherwise linked to the functional limitations of the claim, the arrangement of data further defines the functionality of the invention and thus, cannot be simply disregarded by the Examiner. In the present case, with regard to claim 1, for example, the report recited in the independent claims further defines the reporting step of the method and thus, further defines the functionality of the method. Moreover, the reporting step is linked to the step of collecting data, since it is this data that is being reported. The data that is collected is data that is representative of a performance of the transaction steps of the script executed by the plurality of probes. Thus, the arrangement of individual transaction steps in the report recited in claim 1 further defines the functionality of the claimed invention since it is only possible to generate such a report of individual transaction steps by collecting data representative of the performance of the transaction steps of the script.

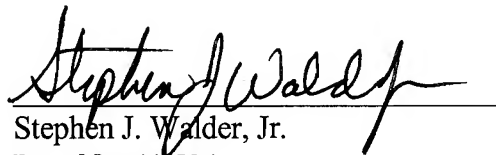
In other words, Appellants are not claiming simply a particular arrangement of data, but the ability to report the performance of individual transaction steps as separate entries in a report, along with the other functions of the invention as recited in the independent claims. Such an ability, or functionality, is not present in any of the references cited by the Examiner, as discussed above and in Appellants' brief. Thus, the recitation of the individual entries for each of the transaction steps of the script is not merely nonfunctional descriptive material, despite the allegations raised by the Examiner, but is instead further defining of the functionality of the claimed invention.

Thus, for the reasons set forth in Appellants' brief, and the reasons discussed above, Appellants respectfully submit that the invention as recited in the pending claims is distinguishing over the alleged combinations of references.

II. Conclusion

In view of the above, Appellants respectfully submit that claims 1-10, 12-13, 15-24, 26-27, 29-39, 41-42, 44-54, 56-57, and 59-64 of the present application are directed to statutory subject matter and that the features of these claims are not taught or suggested by the Hershey, Chandra, Schwaller, and Wlaschin references. Accordingly, Appellants request that the Board of Patent Appeals and Interferences overturn the rejections set forth in the Final Office Action.

Respectfully submitted,

A handwritten signature in black ink, reading "Stephen J. Walder, Jr.", written over a horizontal line.

Stephen J. Walder, Jr.

Reg. No. 41,534

Walder Intellectual Property Law, P.C.

P.O. Box 832745

Richardson, TX 75083

(214) 722-6419

ATTORNEY FOR APPELLANTS